

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301  
Indianapolis, IN 46204  
(317) 233-0696  
<http://www.in.gov/legislative>

**FISCAL IMPACT STATEMENT**

**LS 6398**

**BILL NUMBER:** SB 196

**NOTE PREPARED:** Dec 5, 2012

**BILL AMENDED:**

**SUBJECT:** Habitual Substance Offender.

**FIRST AUTHOR:** Sen. Randolph

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** X **GENERAL  
DEDICATED  
FEDERAL**

**IMPACT:** State

**Summary of Legislation:** This bill excludes misdemeanor possession of marijuana from the habitual substance offender sentencing enhancement if the offense involved the possession of not more than 30 grams of marijuana. It also makes a technical correction.

**Effective Date:** July 1, 2013.

**Explanation of State Expenditures:** Information about offenders in Department of Correction (DOC) facilities with prior misdemeanor marijuana violations are not maintained by DOC. Consequently, the number of offenders who might be affected by this bill is not known, and potential savings cannot be determined.

**Background** – During CY 2011, DOC reported that 136 offenders were committed to DOC with a habitual substance offender enhancement. Of these offenders, 10 were sentenced for possession of marijuana as a Class D felony, while one offender was sentenced for dealing marijuana. All other offenders sentenced with a habitual substance offender enhancement were convicted of another crime involving drugs or driving while intoxicated.

The following table shows the number of offenders committed to DOC facilities in CY 2011 for possession of marijuana as a Class D felony (more than 30 grams if the person has a prior conviction for an offense involving marijuana, hash oil, hashish, salvia, or a synthetic drug) and whether these offenders were sentenced as habitual substance offenders.

<b>Possession of Marijuana as Class D Felony Committed in CY 2011</b>		
	Number of Offenders	Average Sentence (In Years)
With Habitual Substance Enhancement	10	5.3
Without Habitual Substance Enhancement	396	1.3

To further illustrate the potential impact this bill might have, LSA compared the fixed term of incarceration of offenders who were committed to DOC in CY 2011 with habitual substance abuse offender enhancements with those offenders who were sentenced to DOC for the same type of crime but with no habitual substance offender enhancements.

<b>Offenders Committed to DOC in CY 2011 with Habitual Substance Offender Enhancement</b>				
Felony	Offenders with Habitual Substance Abuse Enhancement	Average Sentence (In Years)	Average Sentence Without Enhancement <sup>1,2</sup>	Difference
FA	3	51.0	24.8	26.2
FB	17	16.6	8.4	8.2
FC	19	8.6	4.0	4.6
FD	97	4.9	1.5	3.4
Total	136	7.9	4.6	3.3
<sup>1</sup> Sentence in years.				
<sup>2</sup> Offenders sentenced to DOC for same crime without substance abuse enhancement.				

**Background** – Indiana Code 35-50-2-10(b) authorizes the state to “seek to have a person sentenced as a habitual substance offender for any substance offense by alleging . . . that the person has accumulated two prior unrelated substance offense convictions.” A “substance offense” includes a Class A misdemeanor or a felony in which the possession, use, abuse, delivery, transportation, or manufacture of alcohol or drugs is an element of the crime. If a person who has been convicted of violating IC 9-30-5 (operating a vehicle while intoxicated) as either the current or a past crime, then they may also receive a habitual substance abuse enhancement. The enhancement is an additional fixed term of between 3 and 8 years in prison.

The average expenditure to house an adult offender was \$18,582 in FY 2012. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$3,233.90 annually, or \$8.86 daily, per prisoner.

### **Explanation of State Revenues:**

### **Explanation of Local Expenditures:**

### **Explanation of Local Revenues:**

**State Agencies Affected:** Department of Correction.

**Local Agencies Affected:** Trial courts, local law enforcement agencies.

**Information Sources:** DOC Offender Information System.

**Fiscal Analyst:** Mark Goodpaster, 317-232-9852.